

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** May 24, 2019

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** L'Oreal W. Stepney, P.E., Deputy Director  
Office of Water

**Docket No.:** 2019-0399-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 222, Subsurface Area Drip Dispersal Systems  
Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting  
Amendment of Chapters 222 and 309 Relating to Beneficial Reuse Credits  
Rule Project No. 2016-042-309-OW

### **Background and reason(s) for the rulemaking:**

On March 14, 2016, the Texas Commission on Environmental Quality (commission) received a petition from the City of Austin (petitioner). The commission granted the petition on May 11, 2016. The petition was made in response to increasing demands on water supplies and decreasing availability of contiguous or neighboring tracts of land that are large enough for domestic wastewater disposal under the commission's current rules. This trend is currently appearing in parts of Central Texas where wastewater discharge to water in the state is restricted by 30 TAC Chapter 213, Edwards Aquifer, and 30 TAC Chapter 311, Watershed Protection.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The proposed rulemaking in Chapters 222 and 309 would give an applicant for a Texas Land Application Permit (TLAP) the option to reduce the acreage required for land application of treated domestic wastewater by obtaining a "beneficial reuse credit" that accounts for beneficial reuse (i.e., water that will not go to the applicant's permitted irrigation site). The proposed rulemaking is not compulsory—the rules would only apply if an applicant chooses to seek a beneficial reuse credit. The proposed rulemaking would establish requirements for obtaining and maintaining a beneficial reuse credit. The beneficial reuse credit would be based on the firm reclaimed water demand demonstrated by water use data from the applicant's reclaimed water users. An applicant could also use a beneficial reuse credit to increase the permitted flow without changing the disposal acreage or to change both the disposal acreage and the permitted flow.

#### **B.) Scope required by federal regulations or state statutes:**

None.

#### **C.) Additional staff recommendations that are not required by federal rule or state statute:**

All proposed revisions are either in response to the petition or reflect staff recommendations. Staff recommendations include administrative changes to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent and industry accepted terminology.

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**Statutory authority:**

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission;
- TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority;
- TWC, §5.103, which authorizes the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC;
- TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state;
- TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state;
- TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state;
- TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state;
- TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes;
- TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and
- TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

**Effect on the:**

**A.) Regulated community:**

The regulated community impacted by the proposed rulemaking is limited to permit holders of TLAPs that opt to apply for a beneficial reuse credit. The regulated community that opts to apply for a beneficial reuse credit is likely to experience cost savings by reducing the required acreage for land disposal.

**B.) Public:**

The proposed rulemaking is not expected to have a significant effect on the public.

**C.) Agency programs:**

The proposed rulemaking is expected to increase application review times, frequency of review, and time spent on enforcement for a very small subset of water quality permits.

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For example, permitting staff of the Water Quality Division would need additional time to validate a proposed credit using the applicant's data and the Office of Compliance and Enforcement may spend additional time on compliance data and report reviews, discharge monitoring report generation, and enforcement for a small number of permits. Additionally, this very small subset of permits would be issued for a maximum term of five years, instead of ten years like other TLAPs. The proposed rulemaking is not expected to significantly affect the agency's ability to meet designated performance measures.

**Stakeholder meetings:**

The petitioner drafted the petition with input from a diverse group of regional representatives of state lawmakers and governmental agencies located in Central Texas, wastewater treatment professionals, and environmental advocacy organizations. The executive director held a stakeholder meeting on August 9, 2016, and the public was invited to comment on the rulemaking petition. The public comment period was from August 28, 2016 through October 28, 2016. Comments received were in favor of the rulemaking petition. A public hearing will be held during the comment period on July 25, 2019.

**Potential controversial concerns and legislative interest:**

Some legislators have shown interest in the rulemaking. The commissioners recommended a cautious approach during the commission's consideration of the petition. The preambles for the proposed rules specifically request public comment on whether the safeguards in the proposed rules are sufficient.

**Will this rulemaking affect any current policies or require development of new policies?**

This rulemaking would require the development of new policies to implement the evaluation of beneficial reuse credit applications and the monitoring of facilities with approved beneficial reuse credits.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking would encourage beneficial reuse and create land-use flexibility by allowing TLAP holders to reduce their land disposal site. Without this rulemaking, the land constraint for TLAP holders in Central Texas will continue.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** June 12, 2019

**Anticipated *Texas Register* publication date:** June 28, 2019

**Anticipated public hearing date (if any):** July 25, 2019

**Anticipated public comment period:** June 28, 2019 - July 30, 2019

**Anticipated adoption date:** December 18, 2019

**Agency contacts:**

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**Attachments:**

Petition

Petition's Order

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Martha Landwehr  
Office of General Counsel  
Rebecca Moore  
Kris Hogan